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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision:*** 18.04.2017

+ ARB.P. 421/2016

HALDIRAM SNACKS PVT. LTD. .... Petitioner  
Through Mr.Sanjeev Sindhvani, Sr. Adv. with  
Mr.Varun Goswami, Mr.Rishi  
Manchanda and Mr.Naveen Grover,  
Advs.

versus

MEGHA ENTERPRISES & ORS. .... Respondent  
Through Mr.B.Shравanth Shantam and  
Mr.Pranay Sahni, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.(ORAL)**

1. By the present petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 the petitioner seeks appointment of a Sole Arbitrator to enter upon reference and adjudicate upon the disputes said to have arisen between the parties.

2. Learned senior counsel for the petitioner submits that the respondent No.1 is a partnership firm of which respondents No.2 to 4 are the partners. Pursuant to an order said to have been received by the erstwhile M/s.Coral Products Private Limited (predecessor of the petitioner company) the petitioners imported Crude Palm Oil from foreign suppliers situated at Indonesia and Malaysia. The said goods were sold on credit to respondent No.1 on High Seas through High Sea Sale Agreements dated 02.02.2013 and 25.02.2013. Appropriate sale invoices are said to have been raised on the

respondent No.1 and the delivery of the goods was to be taken by the respondents at Kakinada Port, Andhra Pradesh. The petitioner claims that an amount of Rs.19.03 crores became due and payable by the respondents to the petitioner. Reliance is placed on a communication dated 31.5.2013 issued by respondent No.1 to the said M/s.Coral Products Private Limited the predecessor of the petitioner where an acknowledgement is said to have been made of balance due of Rs.19.03 crores.

3. The Agreement dated 2.2.2013 and 25.02.2013 have an Arbitration Clause which reads as follows:-

“12. Arbitration: All or any disputes(s) that may arise upon this High Seas sale agreement (except in so far as there is no dispute) shall be resolved by arbitration in accordance with the Indian Arbitration Act 1996. This 'Will be without prejudice to any other Rights available to the parties under the Law and will be Subject to the Jurisdiction of the Courts at Hyderabad/Delhi.”

4. The petitioner has also sent a legal notice on 18.5.2015 to the respondents invoking the arbitration clause and requesting the respondents to convey their acceptance for appointment of the sole arbitrator.

5. On 3.6.2016 the respondents sent a reply to the legal notice. The only defence taken in the reply to the legal notice was that the respondents had not given their consent for the arbitration as prejudice will be caused to the respondents in the matter.

6. The matter has been pending since some time. Learned counsel for the respondent submits that time be given to him to file his reply. Keeping in

view that several adjournments have already taken place I have taken the reply in court and perused the same. The reply/counter-affidavit has been returned to the learned counsel for the respondent. Respondent is directed to file the same within two days from today and have it placed on record.

7. Learned counsel appearing for the respondents further submits that they have no objection to the arbitration but the venue of arbitration has to be Hyderabad. He relies upon submissions made in the counter-affidavit to contend that no part of the cause of action arose in Delhi and the entire transaction took place at Hyderabad. The counter-affidavit also specifically states that stamp papers have been purchased in Delhi but all the Agreements were executed at Hyderabad and hence it is urged that the courts in Delhi do not have territorial jurisdiction and the arbitration proceedings can only take place at Hyderabad.

8. Learned senior counsel appearing for the petitioner has countered the submissions of the respondent. He relies upon judgment of this court in ***Mrs. Shradha Wassan and Ors. vs. Mr. Anil Goel and Anr., MANU/DE/0490/2009*** to contend that in the said judgment it has been stated that where there is no express provision in the contract for the place of payment the general rule would be that the debtor is bound to pay the creditor for making payment and the place of payment is where the creditor resides. Learned senior counsel also submits that respondent No.2 is in judicial custody pursuant to an FIR registered by the petitioner.

9. In my opinion, there is merit in the contention of learned senior counsel for the petitioner. The agreement between the parties is silent as to where the payment is to be effected. However, in view of the settled law the courts in Delhi would have territorial jurisdiction. The proposition advanced

by learned senior counsel is settled by a catena of judgments in this regard i.e. debtor finds the creditor. Even otherwise, a perusal of the agreement dated 2.2.2013 and 25.2.2013 would show that both are executed on stamp papers purchased from Delhi.

10. Admittedly, there is an arbitration clause in the agreement between the parties. Thus I see no impediment in allowing the present petition. Petition is allowed and the matter is referred to the Delhi International Arbitration Centre which will appoint an Arbitrator in accordance with the provisions of the Act/Rules of the Centre. The Fees of the Arbitrator shall be in terms of the Rules of the Arbitration Centre. The parties are free to adjudicate their respective contentions before the Arbitrators which have been raised before this court. The learned Arbitrator may take appropriate decision, as per law.

11. Petition stands disposed of.

**JAYANT NATH, J**

**APRIL 18, 2017**

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